

**Wal-Mart Stores, Inc. and United Food and Commercial Workers Local Union 534, AFL-CIO, CLC, Petitioner.** Case 14-RC-11759

June 30, 1999

**DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND LIEBMAN

On April 16, 1997, the Regional Director for Region 14 of the National Labor Relations Board issued a Decision and Order in the above-captioned case finding the petitioned-for unit of the Employer's meatcutters, or alternately, meat department employees at its Jerseyville, Illinois store to be inappropriate. The Regional Director found that a separate meat department unit is not presumptively appropriate, and applying the test set forth in *Scolari's Warehouse Markets, Inc.*,<sup>1</sup> concluded that the meat department employees do not have a distinct community of interest warranting a separate unit. On April 30, 1997, Petitioner filed a timely request for review, arguing that a unit of meatcutters, or alternately, of meat department employees is appropriate. On May 27, 1997, the Board granted review. The Employer and the Petitioner submitted briefs on review.

We have carefully considered the record, including the parties' briefs on review. We agree with the Regional Director that the petitioned-for unit limited to meatcutters is inappropriate. Contrary to the Regional Director, however, we find that the Petitioner's alternative request for a unit of meat department employees is appropriate. Therefore, we reverse the Regional Director's Decision and Order dismissing the petition, reinstate the petition, and direct an election in a unit of the Employer's meat department employees.

**I. BACKGROUND FACTS**

The Employer's Jerseyville Wal-Mart store is one of approximately 350 supercenters. The Jerseyville supercenter includes both a traditional Wal-Mart store and separate full-service grocery store; is divided into several departments including, inter alia, the grocery store and housewares, clothing, electronics, hardware, one-hour photo, and optical; and employs 285 to 290 hourly employees. The meat department is a separate area located on the perimeter of the grocery between the deli and produce departments and includes a cutting room, display cases, and a cooler (which is shared with the deli). There is nothing in the record indicating whether Petitioner or any other labor organization has previously represented or has sought to represent the meat department. No other labor organization seeks a broader unit.

The Jerseyville store's management includes a store manager and two comanagers who oversee a total of six

assistant managers, four of whom work during the day and evening and two who work overnight. On the grocery side, each of the assistant managers oversees two cost areas—the meat, produce, deli, or bakery departments, each of which has a department manager who reports to the assistant manager. In addition, there are 10 zone managers and 1 management trainee.<sup>2</sup> There are also six customer service managers that supervise the front end of the store.

The Petitioner seeks a unit of four meatcutters. Alternately, the Petitioner is willing to represent the entire meat department, including the meatcutters, two clean up persons (cleaners), and one wrapper. The Employer contends that only a storewide unit is appropriate.

**II. APPLICABLE PRECEDENT**

The Board historically found that employees in meat departments constituted presumptively appropriate separate units because the meatcutters "exercised a broad range of traditional meatcutter skills marking them as craftspeople."<sup>3</sup> As boxed meats have become more prevalent in the grocery industry, meatcutters have exercised fewer of the traditional craftsperson meatcutting skills, such as cutting whole animal carcasses into primal and subprimal sections, and boning, seaming, and trimming meats. Thus, in *Scolari's Warehouse Markets*,<sup>4</sup> the Board explained that meatcutters who worked primarily with boxed primal and subprimal meat did not warrant the presumption of appropriateness historically afforded to craftsperson meatcutters. The Board, however, has found that such meatcutters, together with other meat department employees, may still constitute a separate appropriate unit as measured by the Board's traditional community-of-interest factors. In determining whether meat department associates share a distinct community of interest, the Board examines the actual work performed by the meatcutters to determine if the processing of boxed primal and subprimal meats involves "substantial meatcutting skills which are *distinct from the skills of other supermarket employees*."<sup>5</sup> In addition to examining the employees' skills, the Board looks to other community-of-interest factors to determine if the meat department employees share a community of interest with each other distinct from other employees in the store, with no one factor considered determinative.<sup>6</sup> In *Scolari's*, community of interest among meat department employees was measured by whether: (1) the substantial portion of the Employer's meat department business involves boxed meat; (2) the continued application of specialized meatcutting skills is necessary for the processing of the boxed meat; (3) the meatcutters are highly trained;

<sup>2</sup> The record is unclear as to the function of the zone managers.

<sup>3</sup> See, e.g., *R-N Market, Inc.*, 190 NLRB 292 (1971); *Big Y Foods, Inc.*, 238 NLRB 855 (1978).

<sup>4</sup> 319 NLRB 153 (1995).

<sup>5</sup> *Id.* at 156 (emphasis added).

<sup>6</sup> See also *Super K Mart Center*, 323 NLRB 582 (1997).

<sup>1</sup> 319 NLRB 153 (1995).

(4) a substantial percentage of the unit is engaged in skilled meatcutting work; (5) the unit is separately supervised; (6) there is limited interchange and transfers between meat department employees and other store personnel; and (7) employees in the proposed meat department unit receive higher wages than other store employees.

### III. RELEVANT FACTS

#### A. *Boxed meat*

The Jerseyville meat department does not butcher whole carcasses or sides of beef. Rather, the department sells a variety of meat products that arrive at the store at least partially processed. Approximately 30 percent of the department's retail sales consist of ground meats,<sup>7</sup> an unspecified portion of which comes already ground, wrapped, and case-ready. The rest is ground on site. Frozen foods,<sup>8</sup> which also come case-ready, constitute 22 percent of Employer's sales. Poultry, including fresh chicken and turkey, which constitutes 15 percent of the department's retail sales, arrives at the store precut, packaged, priced, and ready to put in the case. Meats that require at least some cutting include fresh, boxed beef and pork, constituting 15 percent and 11.4 percent of the department's sales, respectively. The remainder of the department's sales includes smoked meats, such as hams (3 percent), fresh seafood (1-1/2 percent), fully cooked meats (1 percent), and veal and lamb (slightly less than 1 percent). The Jerseyville meat department's retail sales average approximately \$28,000 per week.

The Jerseyville store receives its beef from producers in boxes. Each box contains a number of precut, boneless cuts, termed subprimal and sub-subprimal, that weigh 8 to 25 pounds. Some of the beef and pork cuts, such as beef eye roasts, require no cutting at all. These are called "freezer buys." For freezer buys, the meat associates remove the cuts of meat from the box, label them, and place them in the case for sale.

#### B. *Skills*

David Clegg, merchandising manager for the meat and deli departments in over 28 of the Employer's stores, testified that 10 percent of the total product coming into the meat department requires cutting by a meatcutter,<sup>9</sup>

and that meatcutters themselves spend less than 10 percent of their time cutting meat with a knife or saw, noting that most of the cutting is done with saw. In contrast, one meatcutter testified that 90 percent of his time is spent "handling" meat. According to this witness, handling meat includes not only cutting meat, but the entire process by which the meat is unloaded from the trucks, unpacked, cut, custom cut, ground, made into sausage, or reworked. This handling time also includes wrapping, shelving meats, setting up the saw, and sanitizing the department.

On a typical day, the meatcutters will first determine what cuts of meat are required. This involves examining the retail cases, and filling out a "cut list."<sup>10</sup> In examining the cases, a meat associate may also remove merchandise whose packaging has been damaged or whose expiration date has passed. Expired meats are discarded. Meats whose packages have been damaged are first checked by the meatcutter to determine if they are still fresh. The meatcutter examines the meat and checks for discoloration or odor indicating that it should be discarded; fresh meats whose packages are damaged are "reworked," which entails processing the cut meat into cube steaks, stew meat, or ground meat.

Once they have composed the daily cut list, meatcutters remove the proper portions from the boxes to cut. Meatcutting is done primarily on a band saw that is equipped with interchangeable blades and a calibrated guide that the meatcutter sets to the appropriate texture and thickness. After sawing, the meatcutter may trim the meat with a knife. Although knives and steels are provided by the store, at least one of the meatcutters provides his own. The cuts are then placed on trays, sent to the wrapper, and placed on the shelves. Meatcutters engage in little or no seaming, edging, or angling of the meat.

The meatcutters, the wrapper, and the cleaners also grind meats. Although some of the ground meat comes to the store prepackaged and case-ready, the remainder of the ground meat arrives partially ground in plastic tubes.

as their 90-percent figure includes a substantially broader range of duties.

<sup>10</sup> The cut list is a fairly involved document, listing a large number of possible cuts available from pork, beef, veal, and lamb. Cuts are broken down by category. For instance, under the heading "Pork Loins" one may select, e.g., loin chops, rib chops, rib half loins, loin half, pigs feet, and neckbones.

There was some conflict among those who testified at the hearing as to who has the authority to fill out the cut list and set the saws. Clegg testified that only when the department manager is absent or otherwise unavailable would another employee in the department prepare the cut list. Clegg, however, conceded that he was not aware of the day-to-day operation of the department as it pertained to this particular duty. The two meatcutters who testified stated that during the 10 months they worked at the Jerseyville store, one of the meatcutters filled out the cut list on a daily basis without the manager's assistance. The most recently hired meat department manager has filled out the cut list during the 3 to 4 days immediately preceding the hearing in this case, and may continue to do so on a daily basis in the future.

<sup>7</sup> Clegg testified that a "good portion" of the ground meat coming into the Jerseyville store is already packed and case-ready. During an average day, the meat department processes 250 pounds of ground beef, with an additional 60 to 80 pounds ground by the cleaners at night.

<sup>8</sup> The record indicates that frozen foods include frozen fish, seafood, meats, and complete frozen dinners.

<sup>9</sup> According to this witness, this figure is based on his analysis of the department's retail sales figures, taking into account the amount of beef and pork that does not require cutting and the fact that beef and pork are higher priced products. We note that there are conflicts on the record as to whether this 10-percent figure refers to time spent cutting meat solely with a knife or with a saw, or whether this figure refers to the total time spent cutting with either a knife or saw. In any event, we do not feel that this figure contradicts the testimony of the meatcutters

The meat associates take preground meat from the tubes, place it in the grinder, and press the button to start the machine. Ground meat is then dispensed onto trays that are sent to the wrapper to wrap and price. Some of the ground beef may also consist of reworked meat that is ground from whole slices of meat. Meatcutters use a tenderizer to make cube steaks. This involves placing a cut of meat into a slot at the top of the machine and collecting the tenderized meat at the bottom. Meatcutters also operate a slicer, but it is unclear from the record how the slicer is used or what portion of the meatcutters' time is spent working with it. With the exception of the slicer, which is also used in the deli department, no other store department uses the type of machines located in the meat department.

Meatcutters perform some custom cutting at the request of customers or through special orders from restaurants. In filling a customer's order, meatcutters may cut one of the larger portions of meat from the case, such as hams, into smaller portions, or cut meat to a requested thickness. Although the department has no standing orders, it regularly receives orders for custom cuts from two restaurants, two to three times a week.<sup>11</sup> Filling these orders involves cutting steaks to differing thickness and hand-cutting chicken to order. In filling these orders, meatcutters receive little or no instruction from the department manager on how to make the cuts; they are expected to have this knowledge based on their prior experience.

#### *C. Training*

The management of the Jerseyville store considers the meatcutter position to be an entry-level position. The meatcutters who testified at the hearing, however, had substantial experience when they were hired. For instance, Mark Loy, who has been working as a meatcutter for the employer since May 1996, testified that he has 21 years of experience in grocery, with between 10 to 12 years of experience in meatcutting. Meatcutter Michael Burrows, who was hired in September 1996, has 9-1/2 years of experience in meatcutting, having worked in both supermarkets and in a slaughterhouse.<sup>12</sup> Burrows was told that he was being hired because of his experience.

There is no meatcutter apprenticeship program; under store policy the meat department manager is responsible for training the meatcutters. Meatcutters, like all employees, are required to complete a computer based

learning (CBL) course, which includes a component dealing with meat equipment. Despite this policy, however, none of the meatcutters completed the CBL course or otherwise received significant on-the-job training in meatcutting, beyond being informed of the store's meatcutting style. The meatcutters at the Jerseyville store were hired with the expectation that they would be able to fully perform on their hire and to adapt their cutting style to that of Employer's, which one meatcutter testified to be slightly different than that of other supermarkets.<sup>13</sup>

#### *D. Numbers of skilled employees*

In addition to meatcutters, the meat department employs one wrapper and two cleaners. Although the wrapper and the cleaners grind meats, they do not operate the saws or use knives. The wrapper works alongside the meatcutters, receiving the cut meat, identifying it, and coding it. A machine then wraps, weighs, and prices the product. The wrapper also stocks the shelves. The two cleaners remove trash and clean and sanitize the machines, saws, grinder, and display cases. Cleaners also wrap meats and stock poultry and frozen food.

#### *E. Supervisors*

The meat department manager is a stipulated supervisor who reports to the assistant manager for area A of the store and whose authority is limited to the meat department. According to Clegg, the meat manager is responsible for the overall profit of the department, merchandising meat products, sanitation, supervision, training, scheduling of the associates, organization of the department, and customer service. According to the Employer, vacancies in the meat department, like vacancies in the rest of the store, are advertised and filled by the appropriate assistant manager who interviews all potential candidates. The meat department manager may, however, take an active role in the hiring process, and previously at least one meat department manager has interviewed and hired a meatcutter on his own accord. Since the opening of the Jerseyville store, there have been three meat department managers. The most recent manager was hired approximately 1 week prior to the hearing in this case.

#### *F. Interchange and interaction*

All of the meat associates—the meatcutters, the wrapper, and the cleaners—are physically stationed in the meat department. The meat department consists of its own cutting room and display cases and a cooler which it shares with the deli department. Meat associates do not

<sup>11</sup> It is unclear from the record how much time the meatcutters spend on custom cutting or whether this work is part of the 10-percent figure cited by Clegg as meat that required cutting. Further, there is some conflict in the testimony over who takes custom orders. While Clegg testified that the meat manager handled all custom orders, two meatcutters testified that they took and filled custom orders as a matter of course.

<sup>12</sup> The record does not indicate how much experience the other two meatcutters had when they were hired.

<sup>13</sup> According to one witness, Employer requires cuts to have different trim and thickness than other stores. Meatcutter Loy testified that he was instructed to adapt his style to that of Employer's, but was not trained in this particular style. Rather, Loy identified these differences from his own examination of how the meat in the case had been cut, and adapted his style accordingly when he began working for Employer.

substitute for associates in other departments, and other departments' associates do not fill in for meat associates. In one instance, two grocery associates were asked to assist in stocking frozen meats. Otherwise, meat associates rarely interchange with employees from other departments. When the wrapper is absent, the meatcutters wrap meat.

There have been a small number of permanent transfers: one cleaner transferred into the department from the position of cart pusher; one wrapper transferred into the meat department from the bakery department; one meatcutter transferred out of the department to the overnight receiving department; and one wrapper transferred to the crafts department.

When fresh meat or deli items arrive, depending on the time of day, meat, grocery, or deli department employees will assist each other in unloading the truck to get the merchandise into the store's refrigeration as quickly as possible. The produce being unloaded is for all of the departments whose employees are involved, and there is no evidence that this constitutes a significant part of the employees' time. Other than these shared tasks, interaction between meat associates and other sales associates is mostly limited to incidental contact between employees in the employee lounge and the communal locker room. Although the Employer has held daily store meetings that all employees are encouraged to attend, meat associates have generally not attended these meetings.<sup>14</sup>

#### G. Wages

The four meatcutters rotate between four different shifts, 6 a.m. to 3 p.m., 7 a.m. to 4 p.m., noon to 7 p.m. and 5 to 9 p.m.<sup>15</sup> The meatcutters' salaries range from a starting salary of \$8 an hour to \$9.10 an hour, which is, on average, higher than those of other sales associates whose salaries range from \$6.50 to \$7 an hour, with a few exceptions.<sup>16</sup>

The wrapper works from 7 a.m. to 4 p.m., and earns \$5.25 an hour. Cleaners work from 5 to 9 p.m. and from noon to 7 p.m. Their salary ranges from \$5.20 to \$6.10 per hour.

### IV. ANALYSIS OF FACTORS

#### A. Boxed meat

In the present case, approximately 57.4 percent of Employer's meat sales consists of fresh beef, pork, lamb, and veal that arrives at the store as boxed meats or tubes of ground meat. These figures are comparable to recent

cases. For instance, in *Scolari's*, 50 to 55 percent of the department's sales consisted of boxed meat; in *Super K Mart*, boxed meat comprised 40 percent of the department's sales. Both of these figures include ground beef. The Employer argues that the Jerseyville meatcutters cut or process less than the total percentage of boxed meat sold by the store, noting that some of the ground beef arrives at Employer's store already processed and case-ready, as does an unspecified portion of the Employers beef and pork. Nonetheless, the meatcutters here spend a significant part of their time handling and cutting boxed meat.

#### B. Skills

Although the Employer's Jerseyville meatcutters, like the meatcutters in *Scolari's*, work mostly with boxed meats and thus exercise fewer of the traditional meatcutting skills, they continue to exercise "skills which are distinct from the skills" of other store employees.<sup>17</sup> The meatcutters utilize equipment unique to the meat department, such as saws, knives, grinders, and tenderizers, and may provide their own knives or steels as did the meatcutters in *Scolari's* and *Super K Mart*. Although the meatcutters here may spend somewhat less time in cutting meat than those in *Scolari's* and *Super K Mart*, they exercise comparable skills in cutting meat.

#### C. Training

The Employer's hiring practices further support the conclusion that meatcutters exercise skills distinct from those exercised by other store employees. Indeed, meatcutter Michael Burrows was specifically told that he was hired because of his extensive meatcutting experience. Upon their hire, meatcutters are expected to perform the full range of meatcutting work required by the Employer as well as to adapt their cutting style to that of the Employer. That the Employer does not have a meatcutter apprenticeship program or other formalized training in meatcutting is of little relevance here, as the meatcutters had prior experience when hired.<sup>18</sup>

#### D. Numbers of skilled employees

Meatcutters make up the substantial portion of Employer's meat department, constituting four of seven employees. Although the two cleaners and wrapper may grind meat, they never use the saws or knives, and are not expected to know how to cut meat. Thus, 57 percent of the unit engages in the more skilled meatcutting work. This is similar to previous cases that ranged from 75 percent of the unit in *Scolari's* to slightly over 25 percent in *Super K Mart*.

<sup>14</sup> Meatcutter Loy testified that for the first 10 months the Jerseyville store was open, the meat department did not attend daily meetings. Since approximately February 1997, however, meat department employees have begun attending these meetings.

<sup>15</sup> Other departments, such as the deli department, utilize similar shift hours.

<sup>16</sup> One dry grocery employee earns \$8.55/hour, one dairy employee earns \$10.01/hour, associate cashiers earn \$8.30/hour, and one stocker in the health and beauty department earns \$8.20/hour.

<sup>17</sup> *Scolari's*, 319 NLRB at 156.

<sup>18</sup> The two meatcutters who testified had 9-1/2 and 12 years' experience. Similarly, the meatcutters in *Scolari's* and *Super K Mart* had substantial prior meatcutting experience when hired.

### E. Supervision

The Jerseyville meat department is separately supervised. The meat department manager is a stipulated supervisor who plays an active role in the hiring of meat department employees and is responsible for the output and day-to-day running of the department.

### F. Interchange and interaction

There is little interchange or interaction between meat associates and other store employees. Meat associates do not substitute for other store employees, and only on rare occasion has a store manager sent an employee from another department to perform meat department work such as stocking shelves. Since the opening of the Jerseyville store, there have been three permanent transfers among the lesser skilled employees and one transfer of a meatcutter out of the department.<sup>19</sup> Interaction with other employees occurs primarily when meat, deli, and grocery department employees work together in unloading refrigerated produce for the departments involved.

### G. Wages

On average, meatcutters' rates of pay are higher than those of employees in other departments, but in the same range as some other highly paid employees scattered throughout the store.<sup>20</sup>

## V. CONCLUSIONS

### A. Meatcutters' unit

Because the meat cutters handle boxed cuts rather than sides of beef, they no longer perform the full measure of once traditional craft skills and are not an appropriate craft-based unit. We further find that the cleaners and wrapper share a close community of interest with the meatcutters. They work in a separate area within the store and perform work for the meat department. They are commonly supervised by the meat department manager and engage in common activities with the meatcutters such as stocking shelves and grinding meat. The cleaners and the wrappers must acquire, at a minimum, basic knowledge of the various cuts of meat to be able to identify and properly label the meats they wrap. Because the meatcutters, wrapper, and cleaners have substantial

common interests, the meatcutters alone are not a separately appropriate departmental unit.

Accordingly, we affirm the Regional Director and find that a separate unit of meatcutters is inappropriate.

### B. Meat department unit

The Jerseyville meat department employees meet the standards set forth in *Scolari's* for finding a separate meat department unit appropriate: a significant portion of the department's sales consist of boxed meat; the meatcutters perform functions, exercise skills, and utilize equipment unique to the meat department; meatcutters have substantial prior experience when hired;<sup>21</sup> a substantial proportion of the department is engaged in skilled work; the department is separately supervised; there is little interchange, transfer, or interaction between the meat department and the rest of the store; and the meatcutters receive generally higher wages. In addition, the meat department employees work in a separate and distinct area of the grocery. We find that the meatcutters, wrapper, and cleaners share a community of interest separate from other employees sufficient to make the meat department employees a readily identifiable and homogenous grouping distinct from other employees.

Accordingly, we reverse the Regional Director and find that a separate unit consisting of the Employer's meat department employees is appropriate.

## ORDER

The petition is reinstated and the matter is remanded to the Regional Director to conduct an election as hereinafter directed in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer in the meat department at its Jerseyville, Illinois store; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Direction of Election omitted from publication.]

<sup>19</sup> In *Scolari's*, there were two transfers into the meat department in the prior 4 years. 319 NLRB at 158. In *Super K-Mart*, three perishables associates transferred into the department. 323 NLRB at 585.

<sup>20</sup> The meatcutters in *Scolari's* and *Super K Mart* were the highest paid employees at the store. In *Super K Mart*, experienced meatcutters earned more than some of the other departments' managers.

<sup>21</sup> As noted earlier, although Employer claims that meatcutters require no training, no such training is necessary as Employer hires employees with substantial prior experience and expects meatcutters to draw upon those skills.